

**IMMIGRANT VICTIMS OF
CRIME:
UNDERSTANDING THE
UNIQUE CHALLENGES
AND AVAILABLE
REMEDIES**

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COMMUNITY MEMBERS



Montana is home to **19,692 immigrants.**

2% of Montanans are foreign-born.

3.9% of Montanans are Latino or Asian.

ENTREPRENEURS

1.7% of all business owners in Montana are foreign-born.

\$44 MILLION

in total net business income is generated by immigrant businesses in Montana.

VOTERS

53.1%
of immigrants in Montana are naturalized U.S. Citizens and are potential voters.

PARENTS

97.6% of children with immigrant parents in Montana are U.S. Citizens.

91.3% of children with immigrant parents in Montana are considered English proficient.

ECONOMIC CONTRIBUTORS

- ➔ Latinos and Asians in Montana have purchasing power of **\$973 MILLION.**
- ➔ Undocumented immigrants pay **\$3.2 MILLION** in Montana state and local taxes.
- ➔ Montana would lose **\$96.3 MILLION** in economic activity, **\$42.8 MILLION** in gross state product, and approximately **720 JOBS** if all undocumented immigrants were removed.

IMMIGRANT VICTIMS IN MONTANA

- Immigrant victims of domestic and sexual violence experience all the problems of non-immigrant victims, but these problems are magnified by factors related to immigrant status.
- Challenges specific to Montana:
 - General unfamiliarity with the experiences of immigrant communities;
 - Increased isolation in rural areas;
 - Lack of access to resources;
 - Lack of availability of immigrant-specific resources;
 - Limited language resources.

IMMIGRANT VICTIMS FACE UNIQUE AND ADDITIONAL CHALLENGES

IMMIGRATION STATUS

- Fear of law enforcement and deportation.
- Legal status may dependent upon abusive citizen spouse.
- Institutional bias.

CULTURAL CONCERNS

- Language, religious beliefs, ability to divorce.
- Availability of family support.
- Isolation.
- Access to resources, knowledge of U.S. system.
- Experience of systems of authority in country of origin.
- Fear of police and justice system.

ECONOMIC DEPENDENCY & EMPOWERMENT

- Access to work authorization.
- Access to public benefits.
- Language skills and education level.
- Requirement to provide income for family in home country.

CHILDREN

- Fear that contact with law enforcement could result in victim being deported and separated from children.
- Lack of knowledge of family or civil law proceedings.

TERMINOLOGY

Immigrants & Nonimmigrants

-  Immigrant usually refers to lawful permanent resident (but under INA, technically includes unauthorized immigrants)
-  Non-immigrant seeks temporary entry to U.S. for specific purpose (examples: students, temporary workers, visitors for business/pleasure, etc.)

Legal Permanent Resident

-  An “LPR” is a green-card holder who can legally reside in the U.S. forever, unless convicted of certain crimes. May apply for citizenship (“naturalization”) after 5 years of LPR status, or in some cases 3 years if married to USC.

Conditional Permanent Resident

-  A “CPR” receives a green card valid for 2 years. In general, a CPR must jointly file with his or her petitioning spouse a Petition to Remove Conditions on Residence with USCIS during the 90-day period immediately preceding the second anniversary of his/her admission as a CPR in order to remove the conditions.

Who is Undocumented?

-  A foreign-born person who resides in the U.S. without legal status, either because he/she entered without inspection or stayed beyond the expiration of a visa or other status.

REMEDIES AVAILABLE TO IMMIGRANT VICTIMS OF DOMESTIC AND SEXUAL VIOLENCE AND TRAFFICKING

- VAWA Self-Petition
- U Visa
- VAWA Cancellation of Removal
- T Visa
- Battered Spouse Waiver
- Asylum (in rare cases)

Immigrant victims of domestic and sexual violence (and trafficking) may enter the country on a marriage or fiance(e) visa, enter the country illegally, or “overstay” a visa. The victim may be married to a U.S. citizen, a permanent resident, or another person who is undocumented. All these factors play a role into the type of relief that may be available to the victim.

(Shahid Haque-Hausrath, p. 24, Montana Lawyer Magazine, June/July 2015)

VAWA SELF-PETITIONING REQUIREMENTS

- **General requirements (INA § 204):**
 - **Subjected to Battery or Extreme Cruelty**
 - DHS will consider any “credible evidence”—OOP, police records, medical records, affidavits, etc.
 - **By a U.S. Citizen or Lawful Permanent Resident Spouse or Parent**
 - File while still married or within 2 years of divorce
 - **With Whom You Resided**
 - **Good Moral Character**
 - Local police clearance or state-issued background check
 - **Good Faith Marriage**
 - Not for purpose of evading immigration laws
- **As a result of the U.S. Supreme Court striking down certain provisions of the Defense of Marriage Act in 2013, VAWA self-petitioning is now available to same-sex married couples (this includes protections for all spouses without regard to their gender, gender identity - including transgender individuals – or sexual orientation)**

ELIGIBILITY FOR VAWA CANCELLATION OF REMOVAL

- A person who is an abused spouse, former spouse, or intended spouse of a U.S. citizen or lawful permanent resident;
- A person who is or was an abused child of a U.S. citizen or lawful permanent resident; and
- A person who is the non-abusive parent of a child who is or was subjected to domestic violence or extreme cruelty by a U.S. citizen or lawful permanent resident parent. The parent herself need not be abused.
- PROCEDURE:
 - Victim must be in removal proceedings
 - If cancellation is granted, victim receives LPR status
 - If cancellation is denied, victim is deported

EXAMPLES OF BATTERED IMMIGRANTS WHO DO NOT QUALIFY TO FILE A VAWA SELF-PETITION BUT MIGHT QUALIFY FOR VAWA CANCELLATION OF REMOVAL:

- The parent of an abused child, regardless of the child's U.S. citizenship, who was never married to the child's abusive U.S. citizen or permanent resident parent;
- The abused spouse of a U.S. citizen or permanent resident spouse who has died or any abused children of a U.S. Citizen or permanent resident parent who has died over 2 years ago;
- An abused spouse who was divorced for over 2 years from the U.S. citizen or permanent resident abuser spouse;
- An abused stepchild whose immigrant parent has been divorced from the abusive parent for over 2 years;
- An abused spouse or child whose citizen or legal permanent resident parent renounced citizenship or lost lawful permanent resident status over 2 years ago;
- Victims of child abuse or incest abused by a U.S. citizen or permanent resident parent while under 21 years of age but who did not file their VAWA self-petition while they were under 21 and who are now over 21 years of age; and
- Victims of child abuse who cannot establish that they have resided with the U.S. citizen or permanent resident abuser parent.

BATTERED SPOUSE WAIVER

- When an individual becomes a U.S. resident due to marriage to a USC, that individual gets CPR status for 2 years.
- Within 90 days of a CPR's status expiration date (2 year anniversary), the CPR and spouse are expected to jointly file a Petition to Remove the Conditions of Residence in order for CPR to get LPR status.
- But filing the Petitioner to Remove Conditions and gaining approval for LPR status can be difficult if the CPR is in an abusive relationship and USC spouse is using immigration status as a way to control CPR.
- The law offers the possibility of a "Battered Spouse Waiver" in these situations, which allows victim CPR to file a Petition to Remove the Conditions of Residence without the cooperation of their abusive spouse.

VICTIMS OF CRIMINAL ACTIVITY: U NON-IMMIGRANT STATUS

- **PURPOSE:**
 - Strengthen investigation and prosecution
 - Protect victims of crime

- **QUALIFYING U VISA CRIMES:**
 - Rape, torture, trafficking, incest, domestic violence, sexual assault, abusive sexual contact, prostitution, sexual exploitation, female genital mutilation, peonage, involuntary servitude, slave trade, kidnapping, abduction (and crimes that fall under those “general categories”, i.e., stalking, strangling, intimidation, misdemeanor assault, etc.).

- **CERTIFICATION BY A LAW ENFORCEMENT OFFICER, JUDGE, OR PROSECUTOR IS ESSENTIAL FOR U VISA APPLICATION:**
 - Must show that the individual:
 - (1) is a victim of a qualifying crime;
 - (2) Possesses information regarding the crime; and
 - (3) Is being, has been, or is likely to be helpful.

- If granted U nonimmigrant status, it is valid for 4 years.
 - In most cases, one can request a green card after residing in US for 3 years and has not unreasonably refused to provide assistance to law enforcement since receiving U visa.

VICTIMS OF HUMAN TRAFFICKING: T NON-IMMIGRANT STATUS

- You may be eligible for a T visa if you:
 - Are or were a victim of trafficking, as defined by law;
 - Are in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking;
 - Comply with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking (or you are under the age of 18, or you are unable to cooperate due to physical or psychological trauma);
 - Demonstrate that you would suffer extreme hardship involving unusual and severe harm if you were removed from the United States.
- If T nonimmigrant status is granted, may apply for LPR status after 3 years. T nonimmigrant status is valid for 4 years.

T OR U VISA?

- Congress created both T and U visas to encourage victims of certain serious crimes to cooperate with law enforcement officials who are prosecuting criminal offenders.
- Only certain types of crimes will qualify the victim for a T or U visa; but both T and U visas include the qualifying crime of human trafficking.
- So, which type of visa should a victim apply for?
 - T Visa applicants must be in the U.S. due to trafficking.
 - U Visa applicants must cooperate with law enforcement to a greater extent.
 - U visa applicants must prove that they suffered “substantial physical or mental abuse” as a result of the qualifying crime.
 - T visa applicants do not need to provide documentation of physical or mental abuse (though it will certainly help to build a more convincing case). However, T visa applicants will need to show that their removal from the U.S. would cause “extreme hardship involving unusual and extreme harm.” This can be difficult to prove.
- There is a yearly cap of 10,000 U visas and a cap of 5,000 T visas (not including visas for derivative family members). Because of these numerical limitations, you may want to see whether the cap for either visa category has been reached before you apply.

INTERNATIONAL MARRIAGE BROKER ACT OF 2005 (IMBRA)

- IMBRA mandates that the U.S. Government give immigrating foreign fiancé(e)s and spouses information and self-help tools to help protect them against violence from the partners who sponsor their visas. Immigrating fiancé(e)s and spouses are often unfamiliar with the U.S. laws and unsupported by family or friends to escape violence at home.
- If an agency qualifies as an “international marriage broker,” it is required to give foreign fiancé(e)s background information on the U.S. client who wants to contact them, including information contained in Federal and State sex offender public registries, and get the prospective foreign fiancé(e)’s written permission before giving the U.S. client his/her contact information. The agency is required to give the foreign fiancé(e) a copy of this pamphlet. It is prohibited from doing business with anyone under 18 years of age.
- The criminal background information compiled by the agency comes from various public sources, as well as information provided by the U.S. citizen clients on immigration applications. USCIS does not have access to all criminal history databases in the United States. The U.S. citizen sponsor may not tell the truth in the sponsorship application. It is also possible the U.S. citizen has a history of abusive behavior but was never arrested or convicted. Therefore, the criminal background information may not be complete. The intent of IMBRA is to provide available information and resources to immigrating fiancé(e)s and spouses.

ASYLUM

- In some rare cases, an immigrant victim of domestic or sexual violence can pursue asylum.
- Refugees who flee from their home countries to escape persecution on account of race, religion, political beliefs or particular social groups can ask for asylum in the U.S.
- Very difficult form of relief to win due to high burden of proof.
- Shahid Haque-Hausrath of Border Crossing Law Firm, P.C., has successfully won asylum for a Mexican woman who fled to escape her husband's severe violence and cruelty.
 - Demonstrated that the client was viewed as the property of her husband, that she had reported the violence to police and had been ignored, and that she had fled multiple times only to be captured and returned to her husband.
 - Under these circumstances, immigration judge agreed that abuse amounted to persecution on account of her "particular social group" and that she had a reasonable fear of returning to Mexico.

LEGAL RIGHTS AFFORDED TO ALL VICTIMS OF DV IN THE U.S.

- All people in the United States, regardless of immigration or citizenship status, are guaranteed basic protections under both civil and criminal law. Laws governing families provide everyone with:
 - The right to obtain a protection order for that also includes children.
 - The right to legal separation or divorce without spousal consent.
 - The right to share certain marital property.
 - The right to ask for custody of child(ren) and financial support.

CASE SCENARIO #1

John and Maria met online and began a dating relationship. John lived in Montana and Maria is from the Philippines. John traveled to the Philippines to meet Maria in person, and while there, John asked Maria to marry him. He promised Maria that he would provide her with a better life in the U.S. Maria agreed to marry John, and John applied for a fiancée petition on Maria's behalf. John made the travel arrangements for Maria and paid for her travel from the Philippines to Montana. Maria traveled to Montana on the fiancée petition and began living with John. Soon after Maria arrived, John began ordering Maria to work on his property, to tend to the animals, clean the house, and do other manual labor. John also demanded that Maria give him daily hour-long massages. John did not allow Maria to leave the property except for occasional trips to the grocery store with John. Three months after Maria arrived, John told Maria he no longer planned to marry her. John also started to contact men online on behalf of Maria and he coordinated meetings with Maria and these men for the purpose of Maria providing sexual services. Maria is afraid and does not know what to do. After Maria has been living with John for four months, another Filipina woman in the community assists her in contacting the local domestic violence program for assistance.

DISCUSSION

- What is Maria's immigration status?
- What possible immigration remedies are available to Maria?
- What immigration remedies are not available to Maria?

CASE SCENARIO #2

Elena and Marcos illegally entered the U.S. from Mexico in 2005 in order to find work and to escape violence back home. At that time, Elena and Marcos had one child, Ana, who was born in Mexico in 2002. After arriving in the U.S., Elena gave birth to two sons, Ramon and Jose, now 3 and 7. Marcos has been physically and emotionally abusive towards Elena throughout their relationship, but Maria has feared calling law enforcement because she does not want to be deported and separated from her three children. Recently, Marcos assaulted Elena outside their apartment door when she was trying to flee, and neighbors called law enforcement. Marcos was arrested and charged with assault. Maria and the children fled to a confidential domestic violence shelter and are in hiding from Marcos, who was released 24 hours after his arrest. Marcos entered into a plea agreement for disorderly conduct, and Maria and the children continue to live at the shelter. Maria petitioned for and received an order of protection against Marcos that includes the children, but wants to know what immigration remedies may be available to her.

DISCUSSION

- What is the immigration status of each of the family members?
- What immigration remedies are available to Maria?
- To the children?
- What immigration remedies are not available?
- Who could potentially certify for a U visa?

RESOURCES

- U.S. Citizenship and Immigration Service (uscis.gov)
- National Immigrant Women's Advocacy Project (NIWAP) (niwap.org)
- Asista (asistahelp.org)
- Border Crossing Law Firm, P.C. (bordercrossinglaw.com)

QUESTIONS?

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